UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In Re: CHAPTER 7

Gerald Butler Bky. 3-93-4300
Debtor.

Molly T. Shields, Trustee Of The Estate Of Gerald N. Butler, Adv. 95-3-194
Plaintiff,
vs.

Norman Goldetsky and Percy Greenberg, ORDER
Defendants.

This matter is before the court on motion by Defendants for dismissal, pursuant to Rule 7012 Fed.R.Bankr.P., for failure to state a claim upon which relief can be granted. David S. Johnson appeared on behalf of Defendants Norman Goldetsky and Percy Greenberg; and, Marc J. Manderscheid appeared on behalf of Plaintiff Molly T. Shields, Trustee.

On the court's own motion, the court makes this order certifying the following question of state law to the Minnesota Supreme Court, pursuant to Minn. Stat. Section 480.061.

Question of Law To Be Answered

Does the Minnesota Fraudulent Transfer Act, Minn. Stat. Section 513.41 et. seq., apply to regularly conducted, noncollusive statutory cancellations of contracts for deed pursuant to Minn. Stat. Section 559.21?

Statement Of Facts

Defendants are the owners of certain real property commonly known as the Crown Iron Works Building, 1225-1333 Tyler Avenue N.E. , Minneapolis, Minnesota ("Property"). On August 30, 1985, Crown Partners III ("Partners III") entered into a contract for deed with Defendants and their spouses for the purchase of the Property. The Debtor, Gerald N. Butler, was a general partner of Partners III, a Minnesota partnership that was formed to purchase and own the Property.

On May 13, 1991, Defendants canceled the contract for deed for the Property through a nonjudicial statutory cancellation procedure, pursuant to Minn. Stat. Section 559.21. The cancellation was, in all aspects, in accordance with applicable Minnesota law. Notice was provided to all interested parties, and the allowed time in which to cure the default lapsed without cure. Thereafter, the Defendants retook possession of the Property.

At the time of the cancellation, Gerald Butler held the vendee's interest in the contract. The balance due on the contract was approximately $1,123,000. The value of the property was as high as $2,200,000. Approximately two years later, on September 3,

1993, Gerald Butler filed for bankruptcy relief under 11 U.S.C. Chapter 7. Molly T. Shields was appointed trustee in the case.

On August 25, 1995, the Trustee filed this adversary proceeding, pursuant to 11 U.S.C. Section 544(b) and the Minnesota Fraudulent Transfer Act, Minn. Stat. Section 513.41 et. seq., to avoid the cancellation and recover the property. Shields alleges that the cancellation constituted a transfer of the Debtor's interest in the Property for less than reasonably equivalent value, and that the transaction is avoidable by her pursuant to Minn. Stat. Sections 513.44(a)(2) and 513.47(a)(1).

The Defendants seek dismissal of the adversary proceeding for failure to state a claim upon which relief can be granted. They argue that regularly conducted, noncollusive statutory cancellations of contracts for deed cannot, as a matter of law, constitute fraudulent transfers under the Minnesota Fraudulent Transfer Act.

Discussion

The issue presented is purely a state law question. The parties have not cited, and the court has been unable to find, any Minnesota Supreme Court cases addressing the issue. Resolution will depend upon the consideration and integration of Minnesota statutes and case law involving and affecting the state's most fundamental laws governing the ownership and transfer of real property. A decision regarding application of Minnesota's Fraudulent Transfer Act to regularly conducted, noncollusive statutory contract for deed cancellations, could have a substantial impact on Minnesota's real estate record ownership and title system. Application of the Act could result in wide spread uncertainty of ownership regarding numerous properties, based on long past transactions; and, it could result in diminished public confidence in the reliability of official records pertaining to the ownership and transfer of real estate. Consideration and decision of this important state law issue properly lies in the Minnesota Supreme Court.

Because the issue presented is purely a state law question, for which there is apparently no precedent; and, because of the potential impact of a decision on Minnesota real property law, and the state's record ownership and title system; the court believes that it is inappropriate for a federal court to rule definitively on this issue. Therefore, the question, whether Minnesota's Fraudulent Transfer Act applies to regularly conducted, noncollusive contract for deed cancellations pursuant to Minn. Stat. Section 559.21, is being certified to the Minnesota Supreme Court.

Order

THEREFORE, IT IS ORDERED: The question of law presented herein is certified to the Minnesota Supreme Court pursuant to Minn. Stat. Section 480.061.

Dated: January 16, 1996

By The Court:

Dennis D. O'Brien
Chief U.S. Bankruptcy Judge